

FILED

STATE OF INDIANA) 18 HAMILTON CIRCUIT/SUPERIOR COURT

COUNTY OF HAMILTON) 2006 APR 18 AM 11:25
P.M.

CAUSE NO. 29203 0604 PL 354

STATE OF INDIANA,

CLERK, HAMILTON COUNTY COURTS

Plaintiff,

v.

WINDOWS & SIDING

OF INDIANA, INC.

d/b/a Windows & Siding of
Indianapolis, Inc.,

Defendant.

COMPLAINT FOR INJUNCTION AND COSTS

The State of Indiana, by Attorney General Stephen Carter, and Deputy Attorney General Justin Hazlett, petitions the court pursuant to the Indiana Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-1 through -12, and the Indiana Home Improvement Contracts Act, Ind. Code §§ 24-5-11-1 through -14, for injunctive relief and costs.

PARTIES

1. Defendant, Windows & Siding of Indiana, Inc., is an Indiana corporation, operating under the assumed business name of Windows & Siding of Indianapolis, Inc., with a principal place of business located at 431 Rangeline Road, Carmel, Indiana. Defendant solicits to provide home improvements for Indiana consumers.

2. At all times relevant to this Complaint, Defendant was engaged in or solicited home improvement contracts.

FACTS

3. At least since January 31, 2000, Defendant has acted as a home improvement supplier by engaging in or soliciting home improvement contracts.

4. On November 8, 2002, Defendant entered into an Assurance of Voluntary Compliance ("AVC") through which it agreed to comply with the Indiana Home Improvement Contracts Act. A true and correct copy of the AVC is attached and incorporated by reference as Exhibit "A."

5. On October 28, 2005, Defendant entered into a contract with Danny Wilson ("Wilson") of Indianapolis, Indiana, wherein Defendant agreed to install vinyl siding on Wilson's home for a price of four thousand nine hundred thirty two dollars (\$4,932.00). A true and correct copy of Defendant's contract with Wilson is attached and incorporated by reference as Exhibit "B."

6. Defendant failed to include the telephone numbers and names of any agent to whom consumer problems and inquiries could be directed in its written home improvement contract with Wilson.

7. Defendant failed to include the approximate start and completion dates of the home improvement in its written home improvement contract with Wilson.

8. Defendant failed to include a legibly printed or typed version of its name, its agent's name, or Wilson's name below the signatures on its contract with Wilson.

9. Defendant failed to complete, or even begin, installation of Wilson's siding until more than three months after contracting with Wilson. In a letter to the Office of the Indiana Attorney General dated February 21, 2006, Defendant has attributed this delay partly to manufacturer delays. A true and correct copy of Defendant's letter is attached and incorporated by reference as Exhibit "C."

10. Although Defendant has attributed part of its failure to timely complete installation of Wilson's siding to manufacturer delays, it failed to identify manufacturer delays as

a possible contingency affecting the completion of Wilson's home improvement in its written contract with Wilson.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

11. The service described in numbered paragraph 5 is a "home improvement" as defined by Ind. Code § 24-5-11-3.

12. The transaction referred to in numbered paragraph 5 is a "home improvement contract" as defined by Ind. Code § 24-5-11-4.

13. Defendant is a home improvement supplier as defined by Ind. Code § 24-5-11-6.

14. By failing to provide Wilson with a completed home improvement contract containing the information referred to in numbered paragraphs 6, 7, 8, and 10, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

15. Plaintiff realleges and incorporates by reference the allegations contained in numbered paragraphs 1 through 14.

16. The transaction referred to in numbered paragraph 5 is a "consumer transaction" as defined by Ind. Code § 24-5-0.5-2(a)(1).

17. Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

18. The violation of the Indiana Home Improvement Contracts Act referred to in numbered paragraph 14 constitutes a deceptive act.

19. Defendant's failure to complete the installation of Wilson's siding more than three months after contracting with Wilson is a violation of Ind. Code § 24-5-0.5-3(a)(10).

20. Defendant's failure to include in its written contract the information referred to in numbered paragraphs 6, 7, and 8, and its failure to timely complete the installation of Wilson's

siding are violations of the terms of the AVC entered into on November 8, 2002. Defendant's violations of the AVC are a deceptive act under Ind. Code § 24-5-0.5-7.

21. The deceptive acts described above will continue and will cause irreparable injury unless Defendant is enjoined from engaging in further conduct that violates Ind. Code §§ 24-5-11-1 through -14 and Ind. Code §§ 24-5-0.5-1 through -12.

RELIEF

22. Plaintiff requests that the Court enter judgment against Defendant for a permanent injunction enjoining Defendant from:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a completed home improvement contract which includes at a minimum the following:

- i. The name of the consumer and the address of the residential property that is the subject of the home improvement;
- ii. The name and address of Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- iii. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- iv. A reasonably detailed description of the proposed home improvements;
- v. If the description required by Ind. Code § 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the

specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

vi. The approximate starting and completion dates of the home improvements;

vii. A statement of any contingencies that would materially change the approximate completion date;

viii. The home improvement contract price; and

ix. Signature lines for Defendant or Defendant's agent and for each consumer who is to be a party to the home improvement contract with a legibly printed or typed version of that person's name placed directly after or below the signature;

b. obtaining a consumer's signature on a home improvement contract or requiring the consumer to make a down payment toward the price of the home improvement prior to Defendant agreeing unequivocally by written signature to all the terms of the home improvement contract;

c. failing to provide the consumer with a fully executed copy of the home improvement contract, including the dates Defendant and the consumer signed it, immediately after the consumer signs it;

d. soliciting or engaging in a home improvement transaction without a license or permit required by law;

e. failing to complete a consumer transaction within a stated period of time or, if no time period is stated, within a reasonable period of time; and

f. violating any provision of Ind. Code §§ 24-5-11-1 through -14 and §§ 24-5-0.5-1 through -12.

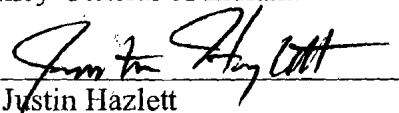
23. Plaintiff further requests that the Court enter judgment against Defendant for costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action.

24. Plaintiff requests that the Court enter judgment against Defendant for all other just and proper relief.

Respectfully submitted,

STEPHEN CARTER
Attorney General of Indiana

By:



Justin Hazlett
Deputy Attorney General
Atty. No. 22046-49

Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 232-0167

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

AVC NO. 02-053

IN RE: WINDOWS AND SIDING OF)
INDIANA, INC.,)
doing business as)
WINDOWS AND SIDING OF,)
INDIANAPOLIS, INC.,)
Respondent.)

FILED

NOV 08 2002

Janet M. Taylor
CLERK OF THE COURT
MARION CIRCUIT COURT

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Steve Carter and by Deputy Attorney General David A. Paetzmann, and the Respondent, Windows and Siding of Indiana, Inc., doing business as Windows and Siding of Indianapolis, Inc., enter into an Assurance of Voluntary Compliance (Assurance), pursuant to Indiana Code §24-5-0.5-7. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. Respondent is an Indiana corporation engaged in business as a home improvement contractor under the assumed business name Windows and Siding of Indianapolis, Inc., with a principal place of business at 5041 W. 96th Street, Indianapolis, Indiana.
2. The terms of this Assurance apply to and are binding upon Respondent, its employees, agents, representatives, successors, and assigns.
3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code §4-6-9-4 and Ind. Code §24-5-0.5-1 et seq.

PLAINTIFF'S
EXHIBIT

A

4. Respondent agrees, pursuant to Ind. Code §24-5-11-10, in every home improvement transaction to provide a completed home improvement contract to the consumer before it is signed by the consumer. Respondent agrees that the contract must contain at a minimum the following:

- (a) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (b) The name and address of the Respondent and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (c) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (d) A reasonably detailed description of the proposed home improvements;
- (e) If the description required by Indiana Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (f) The approximate starting and completion dates of the home improvements;
- (g) A statement of any contingencies that would materially change the approximate completion date;
- (h) The home improvement contract price; and
- (i) Signature lines for the Respondent or the Respondent's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

5. Respondent agrees, pursuant to Ind. Code §24-5-11-11, that before the consumer signs the home improvement contract and before the consumer can be required to make a down payment, the Respondent must have agreed unequivocally by written signature to all of the terms of the home improvement contract.

6. Respondent agrees, pursuant to Ind. Code §24-5-11-12, that Respondent shall give a fully executed copy of the home improvement contract to the consumer immediately after the consumer signs it. The contract must also show the dates the Respondent and each consumer executed the contract.

7. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Home Improvement Contracts Act, Ind. Code §24-5-11-1 et seq.

8. Respondent agrees to refrain from soliciting or entering into any home improvement transaction or commencing work pursuant to any home improvement contract until Respondent has first obtained all licenses and permits required by law.

9. Respondent, in soliciting and/or contracting with consumers, agrees to fully comply with the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 et seq.

10. Upon execution of this Assurance, Respondent shall pay costs to the Office of the Attorney General in the amount of three hundred dollars (\$300.00).

11. Respondent shall not represent that the Office of the Attorney General approves or endorses Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

12. Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

13. The Office of the Attorney General shall file this Assurance with the Circuit Court of Marion County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 8th day of NOVEMBER, 2002.

STATE OF INDIANA

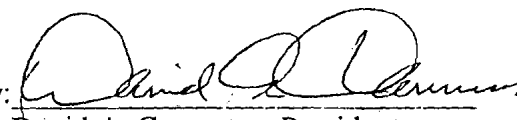
STEVE CARTER
Attorney General of Indiana

By: 

David A. Paetzmann, #6392-23
Deputy Attorney General
Office of Attorney General
402 W. Washington, 5th Floor
Indianapolis, Indiana 46204
Telephone: (317) 233-3442

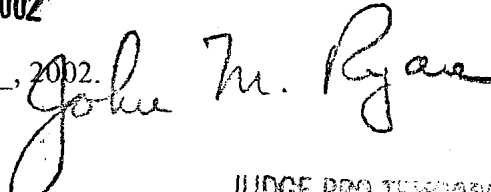
RESPONDENT

WINDOWS AND SIDING OF INDIANA, INC.

by: 
David A. Cremeans, President

APPROVED this _____ day of _____, 2002.

NOV 08 2002


JUDGE PRO TEMPORE
Judge, Marion Circuit Court

PROPOSAL

Windows & Siding of Indianapolis, Inc.

431 South Range Line Rd. Carmel, IN 46032

(317) 705-0200 Fax (317) 705-0300

www.WindowsAndSiding.com



FOR THE BEST
WINDOW & SIDING
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CALL TODAY

ADDRESS: 431 S. RANGE LINE RD.

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STATE: IN

ZIP: 46032

PHONE: (317) 705-0200

FAX: (317) 705-0300

WEBSITE: www.WindowsAndSiding.com

PROJECT: 4/23/07

APPROVAL: 9/8/07

NAME: [illegible]

DATE: 10/26/07

TIME: 10:30

LOCATION: [illegible]

PHONE: [illegible]

FAX: [illegible]

WEBSITE: [illegible]

PROJECT: [illegible]

APPROVAL: [illegible]

We hereby submit specifications and estimates for:

- ① FURNISH AND INSTALL FanFold insulation wall board.
- ② FURNISH + INSTALL Certainteed Monogram Vinyl siding, clapboard style, double 5" color - Savannah Wickan - Woodgrain style -
- ③ FURNISH + INSTALL INVISAGUANT SOFFIT + FASCIA system, color Savannah Wickan.
- ④ Cap garage door frame.
- ⑤ FURNISH + INSTALL 3 octagon gable units TO MATCH.
- ⑥ Clean up + Remove all debris.

WE ANTICIPATE YOUR PROJECT TO BEGIN _____ AND COMPLETION _____

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Four Thousand Nine hundred + Thirty Two — ⁰⁰/₁₀₀ dollars (\$ 4932)

Payment to be made as follows:

CREDIT OR CASH \$2450 down, balance on completion.

CREDIT CARD #

VCR CODE

50% DOWN AND BALANCE TO INSTALLER AT COMPLETION

PLAINTIFF'S
EXHIBIT

B

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, weather or delays beyond our control. Owner to carry fire, tornado, theft and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance. Dave Cremeans at 431 South Range Line Rd. is the registered agent. ALL CUSTOM ORDERED MATERIAL IS THE RESPONSIBILITY OF THE HOMEOWNER AND CANNOT BE CANCELLED.

Authorized
Signature

Printed
Name

Note: this proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal

— The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

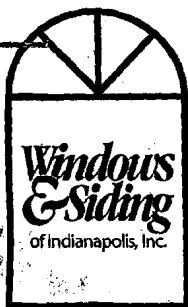
This contract may be withdrawn within 72 hours of acceptance.

TERMS:

PLEASE PAY FROM THIS INVOICE. I UNDERSTAND THE ABOVE WORK IS ORDERED ACCORDANCE WITH THE FOLLOWING.

TERMS: NON ACCOUNT CUSTOMERS INCLUDE \$10.00 BILLING FEE AFTER 10 DAYS. FINANCE CHARGE OF 3% PER MONTH, 36% ANNUAL, CHARGED ON ALL PAST DUE ACCOUNT PLUS COST AND ATTORNEY FEES IN EVENT OF COLLECTION.

SIGNATURE: [Signature] DATE: 10-28-07



**Windows & Siding of
Indianapolis, Inc.**
431 S. Rangeline Road
Carmel, IN 46032
317-874-1111
Fax 317-705-0300
www.WindowsAndSiding.com



FOR THE BEST WINDOWS & SIDING
THIS SIDE OF HEAVEN
CALL 874-ELEVEN-ELEVEN

Libby McNary
State of Indiana
Attorney General
302 West Washington St
Indianapolis, IN 46204-2770

Re: File No. 06-CP-50480

February 21, 2006

Dear Ms. McNary,

Thank you for forwarding the letter from Danny Wilson, one of our clients.

I believe the root of the issue is that the siding may not lay perfectly flat against the wall of the gables of his home. I have personally visited this job site on several occasions and have had personally several phone conversations with Mr. Wilson. I am also aware that several other members of our staff have also been in contact with Mr. Wilson, thus I am puzzled by the comments that we have failed to communicate. However if he feels we have failed to communicate then we have, it is not from a lack of effort on our part.

As far as the siding laying flat, it is as flat as it can be given the underlying siding that was on the home prior to our installation. Vinyl siding is not structural and conforms to the shape of the underlayment. In this case that is rough cedar siding. The new vinyl lays exactly like the old cedar and unless the build were to be reconstructed with a perfectly smooth substrate it cannot lay perfectly flat.

As to the delays they were caused by delays from the manufacturer and the weather which threw off our installation schedules. The job was completed in a timely manner once it was started. We have made several service calls to satisfy Mr. Wilson's concerns. His written warranties are being handled and he will receive them at the beginning of next month.

Sincerely,

David A. Cremeans
President WSI, Inc.



RECEIVED

FEB 23 2006

ATTORNEY GENERAL OF INDIANA
CONSUMER PROTECTION